IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.3273 of 1989
DATE OF DECISION: 20.9.2006
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Prem Singh Mann

..PETITIONER

VS.

The Presiding Officer, Industrial Tribunal and others.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Anurag Jain, Advocate
for the petitioner.

Mr. Sudhir Mittal, Advocate
for the respondent.
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ARVIND KUMAR, J.

The prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing of award dated 10.3.1988 passed by respondent No.1.

The case put forth by the petitioner in the instant petition is that at one point of time, he was an employee of respondent No.2-management. His services were terminated on 11.8.1986. Thereafter, he served a demand notice upon respondent No.2-management. Efforts for reconciliation between the parties were failed. Thereafter, the reference of dispute to the Labour Court was declined by the appropriate Government vide order dated 5.12.1986. The petitioner again made a representation but the same was also dismissed by the appropriate government on 4.3.1987. The petitioner for the third time represented his claim before the appropriate Government and this time he succeeded. The appropriate Government vide order dated 14.5.1987

referred the dispute to the Labour Court for adjudication. The petitioner filed claim statement before the Labour Court. Respondent No.2-management contested the claim of the petitioner. Apart from other plea, they took a stand that since the reference of dispute was made without affording an opportunity of hearing to them, therefore, the reference is bad. The Labour Court on the pleadings of the parties besides other issues, framed issue No.2 as to whether the reference is bad in law? Vide the impugned award, the Labour Court without touching the merits of the dispute held that the reference is bad in law as the appropriate Government had not granted opportunity of hearing to the management prior to referring the dispute to it. Thus, on that score alone, the reference was rejected.

Dissatisfied with the same, the petitioner has preferred the instant petition.

Upon notice of the writ petition, written statement on behalf of respondent No.2 had been filed whereby the averments made in the writ petition have been denied. Justifying the award of the Labour Court, dismissal of the writ petition has been sought.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

The issue involved in this case is whether the appropriate Government should give a hearing to the employer before making a reference subsequently when on earlier occasions, it was declined?

This issue is no more res integra. The Hon'ble Supreme Court in the case of **Sultan Singh Vs. State of Haryana and another 1996 (2) SCC 66,** discussing the provisions of Section 10(1) and 12(5) of the Industrial Disputes Act, 1947, in para Nos.4 and 5 has observed as under:-

"4. A conjoint reading, therefore, would yield to the conclusion that on making an application for reference, it would be open to the State Government to form an opinion whether industrial dispute exists or is apprehended and then either to make a reference to the appropriate authorities or refuse to make the reference. Only on rejection thereof, the order needs to be communicated to the applicant. Nonetheless the order is only an administrative order and not a quasi-judicial order. When it rejects, it records reasons as indicated in sub-section (5) of Section 12 of the Act. The appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Thereby there is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Sub-section (5) of Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only when it refuses to make a reference.

5. The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer nor to consider his objections nor to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference.

> The previous decision of that Court relied on in the case at hand was wrongly decided."

Learned counsel for the respondent-management has also conceded the ratio of law laid down in Sultan Singh's case (supra).

In view of the settled proposition of law, present writ petition is allowed. The impugned award dated 10.3.1988, annexure P-2 passed by the Industrial Tribunal is set aside. The parties are relegated to the jurisdiction of the Industrial Tribunal for adjudication of the lis between the parties, on merits, afresh in accordance with law. The parties are directed to appear before the concerned Industrial Tribunal on 1.11.2006. It shall be appreciated if the Industrial Tribunal shall dispose off the matter within a period of six months from the date when the parties appeared before it.

(ARVIND KUMAR)
JUDGE

September 20 ,2006
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